

SERVICE DATE – SEPTEMBER 28, 2018

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 33 (Sub-No. 284X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—  
IN KANE COUNTY, ILLINOIS

Decided: September 27, 2018

In 2010, Union Pacific Railroad Company (UP) filed a petition for exemption from the prior approval requirements of 49 U.S.C. § 10903 to abandon a 3.17-mile line of railroad known as the St. Charles Industrial Lead, extending from milepost 35.13 to the end of the line at milepost 38.30, near St. Charles, in Kane County, Ill. Notice of the petition was served and published in the Federal Register on June 24, 2010 (75 Fed. Reg. 36,149-50). By decision and notice of interim trail use or abandonment (NITU) served on September 22, 2010 (September 2010 decision), the Board granted the abandonment exemption and authorized a 180-day period, until March 21, 2011, for the County of Kane, Forest Preserve District of Kane County, St. Charles Park District, and the City of St. Charles, all municipal corporations (collectively, the Proponents), to negotiate an interim trail use/rail banking agreement with UP under § 8(d) of the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29.<sup>1</sup> By a series of decisions issued from March 18, 2011, to February 22, 2018, the Board granted requests of the Proponents, with consent from UP, to extend the NITU negotiating period, most recently to August 24, 2018.

On September 6, 2018, the City of St. Charles (the City) filed a letter dated August 24, 2018, requesting another 180-day extension of the NITU negotiating period. The City states that it continues to work with local partner jurisdictions “to compile specific information in efforts to satisfy our negotiating needs, and that it has been in direct contact with [UP].” The City further states that it does not believe that the parties will be able to finalize negotiations before the current negotiating period expires. By letter dated and filed on August 24, 2018, UP states that it is willing to continue negotiating with the City and supports the City’s request for an additional 180-day extension.

On August 31, 2018, the National Association of Reversionary Property Owners (NARPO) filed a letter objecting to another extension of the NITU negotiating period. NARPO filed a second letter on September 6, 2018, reiterating that it “strongly objects” to another extension of the NITU.

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<sup>1</sup> The September 2010 decision also imposed a public use condition for the right-of-way, which expired on March 21, 2011.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction, and the NITU negotiating period may be extended. See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); see also Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Because these requirements have been met, the NITU negotiating period will be extended for an additional 180 days, from August 24, 2018, to February 20, 2019. If an interim trail use agreement is reached (and thus interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

However, in light of NARPO's concerns, and given that eight years have elapsed since abandonment was authorized, the Proponents will be directed to provide more detailed information in the event they seek to extend the NITU negotiating period further. Specifically, in any future extension request, the Proponents will be required to describe in detail (1) the progress of their negotiations with UP since the last extension was granted, (2) the specific actions still needed to be taken before an agreement can be reached (including when those actions are expected to be completed), and (3) when (assuming the parties' further negotiations are successful) they expect an agreement with UP to be finalized.

It is ordered:

1. The City's request to extend the NITU negotiating period for an additional 180 days is granted.
2. The NITU negotiating period is extended from August 24, 2018, to February 20, 2019.
3. Any future requests to extend the NITU negotiating period shall include the detailed information described above.
4. If an interim trail use/rail banking agreement is reached, the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).
5. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.